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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **FOR THE COUNTY OF TULARE**

15 GUSTAVO GOMEZ, on behalf of himself and  
16 all aggrieved employees,

17 Plaintiff,

18 vs.

19 R.N.V., INC. d/b/a R-N MARKET, and DOES  
20 1 to 100,

21 Defendants.

Case No. VCU292268

**DECLARATION OF MANNY STARR IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR APPROVAL OF PAGA  
SETTLEMENT**

Date: April 18, 2023

Time: 8:30 a.m.

Dept.: 7

Complaint Filed: June 27, 2022

Trial Date: July 2, 2023

## DECLARATION OF MANNY STARR

I, Manny Starr, declare as follows:

1. I am an attorney at law duly admitted to practice before all courts in the State of California and am a member of the law firm Frontier Law Center. I am one of the attorneys of record for Plaintiff Gustavo Gomez (“Plaintiff”), on behalf of himself and all aggrieved employees, in the above-entitled action. I have personal knowledge of the matters set forth herein, and if called upon as a witness to testify thereto, I could and would competently do so.

## CASE SUMMARY

2. On April 12, 2022, Plaintiff filed his written notice with the California Labor & Workforce Development Agency (“LWDA”), alleging violations of Labor Code sections 201, 202, 203, 226, 226.7, 512, and 2802. Specifically, the letter alleged: that Defendant failed to relieve the Aggrieved Employees of all duty during rest and meal periods; that although time spent on meal breaks was “on duty,” the Aggrieved Employees were not paid for this time and therefore not paid all wages due; that the wage statements given to Aggrieved Employees failed to disclose all hours worked and wages earned, including break premiums; that Gomez and the Aggrieved Employees had therefore not been paid all wages due and payable on the date of termination or within 72 hours thereafter; and that Defendant failed to reimburse the Aggrieved Employees for knives, chain safety gloves, knife sharpeners, and other necessary equipment.

3. Thereafter, on June 22, 2022, Plaintiff filed his representative action complaint (“Complaint”) against Defendant R.N.V. Inc. d/b/a R-N Market (“Defendant”) in the Superior Court of California, County of Tulare. The Complaint alleges one causes of action for PAGA penalties, pursuant to Labor Code § 2698, et seq.

4. After the filing of the Complaint, Plaintiff and Defendants (the “Parties”) began the exchange of formal written discovery. During the course of discovery, the Parties discussed the possibility of informal resolution of the litigation through mediation. In connection with the mediation, the Parties engaged in informal discovery to allow Plaintiff to

1 assess the claims and liability, as well as analyze the maximum exposure of penalties.  
2 Defendants provided Plaintiff's counsel with informal data and information pertaining to the  
3 number of Aggrieved Employees and the number of pay periods at issue. Defendant also  
4 provided a 20% sampling of wage and time records for the Aggrieved Employees, as well as  
5 documents and information pertaining to Defendant's policies and practices around breaks.  
6 Based on the data provided by Defendants, Plaintiff's counsel conducted an analysis of  
7 liability and potential maximum exposure for the PAGA penalties.

8 5. The Parties conducted a full-day mediation with experienced employment law  
9 mediator David A. Lowe on February 7, 2023. While the parties did not reach an agreement  
10 during the mediation session, both Parties ultimately accepted the mediator's proposal.

11 6. After thorough investigation and evaluation of the facts and claims, and as a  
12 result of the arm's-length negotiations and a mediator's proposal, the Parties and their counsel  
13 ultimately reached the current settlement, for the Gross Amount of \$150,000. In resolution of  
14 Plaintiff's PAGA claims in this lawsuit, the Parties entered into the Joint Stipulation And  
15 Settlement of PAGA Action ("Settlement" or "Settlement Agreement"). A true and correct  
16 copy of the Settlement Agreement is attached as **Exhibit 1**.

17 7. The Parties recognize the risk, expense, and delay in continuing litigation with  
18 the class and PAGA claims, and believe the Settlement to be fair, reasonable, and adequate.

19 8. Each side has apprised the other of their respective factual contentions, legal  
20 theories, and defenses, resulting in negotiations taking place between the Parties.

21  
22 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

23 9. Based on the class data provided by Defendants, Plaintiff estimated that  
24 Defendant would face potential liability of up to approximately \$2,561,200 for Plaintiff's  
25 PAGA claims if Plaintiff succeeded at trial. Plaintiff was able to estimate the potential PAGA  
26 penalties based on data provided by Defendants. Specifically, Plaintiff calculated PAGA  
27 penalties under based on 182 Aggrieved Employees (107 current, plus 75 former).

28 10. The Gross Settlement Amount is \$150,000.00, which is approximately **5.86%** of

1 the maximum PAGA penalties.

2 11. Although Plaintiff believes in the merits of the alleged claims and maintains that  
3 there is no reason for reducing PAGA penalties, Plaintiff is aware that Defendants may raise  
4 defenses to the claims and further with respect to the reduction of PAGA penalties and that  
5 they could be persuasive to the Court.

6 12. It is Defendant's position that their meal and rest break policies are facially  
7 compliant. Defendant contends that Plaintiff's claims are supported only by their own  
8 statements, contradicted by both Defendant's written policies, Plaintiff's own timecards, and  
9 sworn declarations of other employees. Defendant further contends that even if Plaintiff could  
10 prevail on his claims for himself individually, there is no practical way to try this as a PAGA  
11 case.

12 13. Moreover, even if Plaintiff were to successfully prove his claims at trial, there is  
13 a possibility that the Court may only award a small percentage of PAGA penalties, as the  
14 Court has discretion to do so. The Gross Settlement Amount was premised with this risk in  
15 mind, associated with the possibility of the Court significantly reducing Plaintiff's PAGA  
16 penalties, along with other attendant risks, even if Plaintiff was to prevail at trial.

17 14. Although Plaintiff believes that the case can be tried on a representative basis,  
18 Plaintiff also believes in the fairness of the settlement that is based on factoring in the  
19 uncertainty and risks to Plaintiff involved in not prevailing on one or more of the theories  
20 alleged in the operative Complaint, the possibility of dismissal based on unmanageability, and  
21 the potential for appeals.

22 15. On a raw average, each Aggrieved Employee may potentially recover  
23 approximately \$103.02, taken by dividing 25% of the total PAGA penalties by the total  
24 number of Aggrieved Employees.

25 16. I have spent significant time researching and pursuing the claims that have been  
26 alleged in this action. The Parties engaged in formal and informal discovery and participated  
27 in the exchange of sample data and Defendants' pertinent policies and practices. In addition,  
28 my office drafted pre-litigation requests for records as well as the PAGA notice. Based on my

1 review of all the documents and information, and based on my experience in complex  
2 representative employment litigation, I believe this settlement to be fair, adequate, and  
3 reasonable.

4 17. Our office received a bid from Phoenix Settlement Administrators to administer  
5 the settlement for \$3,000. The quote includes all necessary mailing, processing, and tax  
6 reporting, as well as 1 round of remailing and skip-tracing for returned check and notice  
7 packets that come back without a forwarding address. Given the PAGA only nature of the  
8 settlement and the number of Aggrieved employees, I believe this to be a fair and reasonable  
9 amount.

10 18. I was retained based upon a contingency fee arrangement wherein Plaintiff's  
11 counsel agreed to advance all costs and receive no fee unless a recovery was accomplished.  
12 Specifically, had Plaintiff failed to prevail in this case, counsel for Plaintiff would have spent a  
13 significant amount of time, money and other resources without any benefit or return. In  
14 addition, had Plaintiff also failed to prevail in the present case, Defendants would have been  
15 able to seek costs in connection with their defense of the case.

16 19. Our office has spent \$9,989.76 in expenses pursuing this case. These costs  
17 include filing fees (with the Court and the LWDA), costs of service, mediation, and other  
18 reasonably necessary costs expended in prosecuting this action.

19 20. Plaintiff participated in the discovery process, provided numerous documents to  
20 his counsel for review, and spent several hours collectively on the phone answering questions  
21 about the case. Further, as part of the agreement, Plaintiff is executing a general release that is  
22 far broader than the PAGA-only release applicable to the other Aggrieved Employees.  
23 Finally, Plaintiff has taken a risk upon himself in having his name associated with this lawsuit,  
24 as future employers may be reluctant to hire an employee with a history of litigating against  
25 their employer. I believe therefore that the enhancement payment to Plaintiff is fair and  
26 reasonable compensation.

27 ///

28 ///

1 I declare under penalty of perjury under the laws of California that the above is true  
2 and correct.

3 Executed on 03/14/23 | 3:26 PDT. Austin  
4 in \_\_\_\_\_, Texas.

5 DocuSigned by:  
6   
7 82E9DC9ABF854A8...  
8 Manny Starr

# **EXHIBIT 1**

**THEODORE R. TANG 313294**

**MANNY M. STARR 319778**

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Attorneys for Plaintiff:

**GUSTAVO GOMEZ**

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Telephone: (559) 325-0500

Attorneys for Defendant:

**R.N.V., INC.**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF TULARE**

\* \* \*

GUSTAVO GOMEZ, as an individual and on  
behalf of aggrieved employees,

Plaintiff,

vs.

R.N.V., INC., a California limited liability  
company; and DOES 1 through 50, inclusive,

Defendants.

Case No. VCU292268

**JOINT STIPULATION AND  
SETTLEMENT OF PAGA ACTION**

Subject to approval by the Court, which counsel and the parties agree to pursue and recommend in good faith, Plaintiff Gustavo Gomez ("Plaintiff"), individually and on behalf of all other aggrieved employees, on the one hand, and Defendant R.N.V., Inc. on the other ("Defendant"), hereby agree to the following binding Settlement of the action designated *Gomez v. R.N.V., Inc.*, Superior Court of the State of California, County of Tulare, Case No. VCU292268. As detailed below, in the event the Court does not enter orders consistent with the terms of the Settlement or the conditions precedent are not met for any reason, this Stipulation shall be void and shall be of no force or effect whatsoever.

### **I. DEFINED TERMS**

As used herein, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Stipulation are not specifically defined below, but are defined elsewhere in the Stipulation, they are incorporated by reference into this definition section:

#### **1. Action.**

"Action" shall refer to the civil action filed by Plaintiff on or about June 27, 2022, in Tulare County Superior Court, Case No. VCU292268, and any amendments thereto.

#### **2. Administrative Expenses.**

"Administrative Expenses" shall include all costs and expenses associated with the Settlement Administrator.

#### **3. Aggrieved or Covered Employees.**

The "Covered Employees" or "Aggrieved Employees" for the purposes of this Settlement only, shall consist of all individuals employed by Defendant in California as non-exempt employees at any time from the period of April 23, 2021, through the earlier of the date which the Court approves the Settlement or April 8, 2023.

#### **4. Attorneys' Fees and Expenses.**

"Attorneys' Fees and Expenses" shall mean Plaintiff's Counsel's attorneys' fees and expenses as set forth in Paragraph III.1.

#### **5. Court.**

"Court" shall mean the Superior Court of California in and for the County of Tulare.

1           **6. Defendant.**

2           “Defendant” shall mean R.N.V., Inc.

3           **7. Defense Counsel.**

4           “Defense Counsel” shall mean the attorneys of Sutton Hague Law Corporation.

5           **8. Effective Date.**

6           The “Effective Date” shall be the date when all of the following events have occurred: (1)  
7 the Court has heard Plaintiff’s Motion for Approval of the Settlement and entered an order and  
8 judgment approving the Settlement; and (2) the time for appeal, if applicable (as explained  
9 herein), has expired. If no objection by the LWDA is made to the Settlement, there is no right to  
10 appeal and the Effective Date is the date upon which the Court signs the final order and  
11 judgment. If an objection has been filed and/or heard at the hearing on Plaintiff’s Motion for  
12 Approval, the Effective Date means: (1) the date of final affirmation of the approval order and  
13 judgment from any appeal, the expiration of the time for, or the denial of, a petition to review the  
14 approval order, or if review is granted, the date of final affirmation of the approval order and  
15 judgment following review pursuant to that grant; (2) the date of final dismissal of any appeal  
16 from the approval order and judgment or the final dismissal of any proceeding to review the  
17 approval order and judgment, provided that the approval order and judgment is affirmed and/or  
18 not reversed in any part; or (3) if no appeal is filed, the expiration date of the time for the filing  
19 or noticing of any appeal from the Court’s approval of the Resolution, as determined under Rule  
20 8.104(a)(3) of the California Rules of Court.

21           **9. Enhancement Payment.**

22           “Enhancement Payment” shall mean any additional monetary payment provided to  
23 Plaintiff for: (i) his efforts and risks on behalf of the State of California and the Covered  
24 Employees in this Action as well, and (ii) the execution of a general release, in addition to the  
25 release agreed to by the Covered Employees.

26           **10. Gross Settlement Amount.**

27           “Gross Settlement Amount” or “GSA” shall mean One Hundred and Fifty Thousand  
28 Dollars (\$150,000). The GSA includes: (1) Administrative Expenses; (2) Enhancement Payment;

(3) Attorneys' Fees and Expenses; (4) Individual Penalties Payments; and (5) the payment to the LWDA.

**11. Individual Penalties Payment.**

"Individual Penalties Payment" shall mean the amount which is ultimately distributed to each Covered Employee.

**12. Net Settlement Amount.**

"Net Settlement Amount" or "NSA" shall mean the GSA, less Administrative Expenses, Plaintiff's Enhancement Payment, and Attorneys' Fees and Expenses.

**13. PAGA Representative.**

"PAGA Representative" shall mean Plaintiff Gustavo Gomez.

**14. Parties.**

"Parties" shall mean the Plaintiff and Defendant.

**15. Plaintiff.**

"Plaintiff" shall mean Plaintiff Gustavo Gomez.

**16. Plaintiff's Counsel.**

"Plaintiff's Counsel" shall collectively refer to the attorneys of the Frontier Law Center.

**17. Released Claims.**

"Released Claim(s)" shall mean and include, without limitation, any and all claims for civil penalties that could have been assessed or collected by Plaintiff or the LWDA, a State of California Executive Branch Agency under the PAGA, based on the allegations set forth in Plaintiff's April 12, 2022 letter to the LWDA ("PAGA Letter"), including any and all claims under California Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 558, 1197, 1197.1, 2699, and 2802 all of which are expressly referenced in Plaintiff's PAGA Letter, and any other claims for civil penalties for failure to pay minimum and/or overtime wages, failure to pay all wages owed each pay period, failure to provide compliant meal periods, failure to provide compliant rest periods, failure to reimburse employees for business expenses, failure to issue accurate itemized wage statements, failure to maintain accurate payroll records for its non-exempt employees, and failure to pay all wages due and owing upon termination. The release shall be

1 included as part of any final judgment in this action, so that all released claims and rights shall  
2 also be barred by principles of res judicata. "Released Claims" does not release any person,  
3 party or entity from claims, if any, by PAGA Group Members for workers compensation,  
4 unemployment, wrongful termination, discrimination, harassment, retaliation, or disability  
5 benefits of any nature. The Settled Claims are those that accrued during the PAGA Period.

6 The PAGA Representative Group shall be forever barred from asserting, instituting, or  
7 maintaining against any or all the Released Parties, any and all claims, demands, actions, causes  
8 of action, lawsuits, arbitrations, damages, or liabilities whether legal, equitable, or otherwise,  
9 relating in any way to the claims asserted or the factual or legal allegations made in the Action as  
10 it relates to PAGA claims only.

11 **18. Released Parties.**

12 "Released Parties" shall mean and include Defendant and its past, present and/or future,  
13 direct and/or indirect, officers, directors, employees, representatives, administrators, attorneys,  
14 agents, parent companies, subsidiaries, affiliates, related entities, consultants, shareholders,  
15 members, joint ventures, predecessors, successors, and/or assigns.

16 **19. Settlement.**

17 "Settlement" shall mean the settlement memorialized in this Agreement.

18 **20. Settlement Administrator.**

19 "Settlement Administrator" means Phoenix Class Action Administration Solutions  
20 ("Phoenix"), or any other third-party administrator mutually agreed to by the Parties and  
21 approved by the Court, which will perform the duties of: (a) calculating the amounts due to each  
22 Aggrieved Employee pursuant to the Settlement; (b) providing Individual Penalties Payments,  
23 along with IRS Forms 1099, to the Aggrieved Employees; (c) reporting the Individual Penalties  
24 Payment amounts of each Aggrieved Employee to all required taxing and other authorities; (d)  
25 utilizing the National Change of Address Database maintained by the United States Postal  
26 Service, mail-forwarding information and/or skip tracing methods, as reasonable, to update the  
27 Database and taking steps to send Individual Penalties Payments to current mailing addresses; (e)  
28

performing such other duties as are described herein; and (f) establishing a Qualified Settlement Fund pursuant to applicable law for the purpose of administering this Settlement.

**21. Settlement Approval Date.**

“Settlement Approval Date” shall mean the date upon which the Court enters an order approving this Settlement.

**22. Settlement Period or PAGA Period.**

The “Settlement Period” or “PAGA Period” shall be defined as commencing on April 23, 2021, and continuing through the earlier of the date of the Court’s order granting approval of the Settlement or April 8, 2023.

**II. RECITALS**

This Stipulation is made by Named Plaintiff on behalf of himself and each Covered Employee, on the one hand, and Defendant, on the other hand, and is subject to the approval of the Court.

1. This Agreement encompasses and shall include all Covered Employees as defined herein.

2. On April 12, 2022, Plaintiff, on behalf of all Covered Employees, notified the Labor and Workforce Development Agency (“LWDA”) of his allegations that Defendant had: 1) failed to properly pay minimum, regular and overtime to its hourly employees; 2) failed to provide compliant meal periods to its non-exempt employees; 3) failed to provide compliant rest periods to its non-exempt employees; 4) failed to pay wages to employees upon termination of employment; 5) failed to furnish compliant wage statements to its non-exempt employees; and 6) failed to reimburse business related expenses of non-exempt employees. The LWDA did not provide any notice that it intended to investigate Plaintiff’s allegations.

3. On or about June 27, 2022, Plaintiff filed Case No. VCU292268, in which Plaintiff alleged various causes of action on a representative action basis based on violations of the California Labor Code and provisions of the relevant Industrial Wage Order.

4. Defendant filed a general denial to the allegations in Plaintiff’s Complaint, denying all material allegations of liability and asserting various affirmative defenses. Defendant

1 asserts that it complied with applicable laws in that it compensated Covered Employees for all  
2 hours worked and otherwise complied with its obligations under the California Labor Code and  
3 associated regulations and Industrial Wage Orders.

4 5. Defendant is entering this Agreement solely to avoid the time and expense of  
5 further litigation. Nothing in this Agreement may be construed as an admission of any  
6 wrongdoing by Defendant. Defendant has taken into account the uncertainty and risks inherent in  
7 litigation. Defendant has therefore concluded that it is desirable that the Action be resolved in the  
8 manner and upon the terms and conditions set forth in this Agreement.

9 6. On February 7, 2023, the parties engaged in extensive mediation before  
10 experienced mediator David Lowe, Esq. of Rudy, Exelrod, Zieff & Lowe. Prior to mediation,  
11 Plaintiff and Defendant engaged in informal discovery that included the exchange of time and  
12 pay records for Plaintiff and certain Covered Employees, the number of Covered Employees and  
13 their pay rates, and other policy documents. The Parties also participated in various telephonic  
14 conferences and exchanged information related to PAGA exposure. At the end of a full day of  
15 mediation, Mr. Lowe issued a mediator's proposal for resolution of this case in accordance with  
16 the terms set forth in this Agreement. The Parties indicated their acceptance of the proposal.

17 7. Defendant represents there are approximately 182 Covered Employees in the  
18 representative period of time encompassed in the Settlement Period. Upon approval of this  
19 PAGA settlement, the Settlement Administrator will provide a declaration under penalty of  
20 perjury to counsel for Plaintiff that the PAGA settlement checks have been issued and will  
21 provide an accounting for uncashed settlement checks as set forth in this Agreement.

22 8. Plaintiff warrants he has not sold, assigned, or transferred any claim or cause of  
23 action, which he has or had against Defendant or any other person or entity who is covered by  
24 this release of claims.

25 THEREFORE, in consideration of the mutual promises, assurances, and covenants set  
26 forth in this Agreement, the parties agree as follows:

### III. STIPULATION AND AGREEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED, by and among the Named Plaintiff on behalf of the members of the PAGA Group on the one hand, and Defendant on the other hand, and subject to the approval of the Court, that the Action is hereby being compromised and settled pursuant to the terms and conditions set forth in this Agreement, and subject to the following terms and conditions:

1. **Gross Settlement Amount.** Subject to the notice procedures set forth below and Approval by the Court, Defendant agrees to pay the Gross Settlement Amount (“GSA”) of ONE HUNDRED AND FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$150,000.00) to settle the Action. The GSA shall be allocated as follows, subject to approval by the Court: (i) up to thirty-five percent (35%) of the GSA or Fifty-Two Thousand and Five Hundred Dollars (\$52,500) for an award of Plaintiff’s Counsel’s attorneys’ fees; (ii) up to Twelve Thousand Dollars (\$12,000.00) for reimbursement of actual costs incurred in Plaintiff’s Counsel’s litigation of this case; (iii) up to Three Thousand Dollars (\$3,000.00) for payment of Administrative Expenses; (iv) up to Seven Thousand Five Hundred Dollars (\$7,500.00) for Plaintiff’s Enhancement Payment; (v) after deduction of the amounts enumerated above, the Net Settlement Amount (“NSA”), estimated to be at least Seventy Five Thousand Dollars (\$75,000), shall be made to the Covered Employees (including Plaintiff) and to the LWDA in accordance with Paragraph III.2.

2. **Distribution of the Net Settlement Amount.** The NSA shall be calculated after deducting the Attorneys’ Fees and Expenses, Administrative Expenses, and Enhancement Payment. The NSA will then be distributed as follows:

a) A total of 75% of the NSA shall be paid to the LWDA pursuant to Labor Code section 2699(i).

b) A total of 25% of the NSA shall be distributed to the Covered Employees on a pro rata basis, based on their respective number of compensable pay periods during the Settlement Period, according to Defendant’s records. Covered Employees will receive an IRS Form 1099-MISC (Box 3) for this payment.

3. **Court Approval.** After full execution of this Agreement, Plaintiff shall promptly move the court for approval of the Settlement, as well as approval of all amounts to be deducted from the GSA as described in Paragraph III.1. Defendant shall not oppose the motion and shall make reasonable efforts to cooperate in obtaining approval of the Settlement. Plaintiff's Counsel shall submit the Agreement to the Court and LWDA, as necessary under Labor Code section 2699(l) and any other applicable provision. Should the Court not grant approval of this Agreement or should the LWDA object to this Agreement, then the entirety of the Agreement shall be null and void, unless otherwise agreed upon in writing by the Parties. The Court shall retain jurisdiction to enforce the terms and conditions of the judgment. The judgment shall not be recorded in any manner, and no effort shall be made to enforce it, unless Defendant defaults on its payment obligations under this Agreement. If the Agreement is null and void, and a new trial date is selected, all discovery deadlines shall be based on the new trial date.

4. **Reversion.** In the event the Court does not approve any amount requested to be deducted from the GSA as described in Paragraph III.1, including Attorneys' Fees and Expenses, Administrative Expenses, and Enhancement Payment, any amount requested but not approved shall not revert to Defendants, but shall be added to the NSA for distribution pursuant to Paragraph III.2.

5. **Non-Disparagement.** Plaintiff, as well as his counsel, agree not to publicly disparage Defendant or any of the Released Parties.

#### **IV. RELEASED CLAIMS**

##### **1. Plaintiff's Release of Claims And General Release.**

a) Plaintiff agrees to release the Released Parties from the Released Claims through the Settlement Period.

b) Plaintiff agrees to a general release of claims for himself and his respective spouse, heirs, successors and assigns, forever releasing the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning

of time through the date of his signature on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to his employment with R.N.V., Inc. or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This release excludes any release of any claims not permitted to be released by law.

c) Plaintiff acknowledges that: (a) he has consulted with an attorney prior to executing this Agreement; (b) he has read the release and understands the effect of his release and that he is releasing legal rights; (c) he is aware of certain rights to which he may be entitled under certain statutes and laws identified in the release; (d) he has had adequate time to consider this Agreement; (e) he understands the Agreement and agrees to be bound by its terms; and (f) as consideration for executing this Agreement, he has received additional benefits and compensation of value to which he would not otherwise be entitled.

2. **Release By Covered Employees.** The Covered Employees agree to release the Released Claims against the Released Parties through the Settlement Period.

3. **Settlement Nullification.** If, at any time between now and the date upon which the calculations concerning the estimated Individual Settlement Payments are made, the number of PAGA Members is ten percent (10%) higher than 182 for the period of dated April 23, 2021 through the date of mediation (February 7, 2023), Plaintiff shall have, in his sole discretion, the option to terminate the PAGA Agreement. If Plaintiff decides to void the PAGA Agreement pursuant to this term, then the PAGA Agreement shall be considered void, and neither the

1 Agreement, nor any of the related negotiations or proceedings, shall be of any force or effect,  
2 and the Parties shall stand in the same position, without prejudice, as if the PAGA Agreement  
3 had been neither entered into.

4 **V. ADMINISTRATIVE EXPENSES**

5 1. **The Settlement Administrator's Costs and Expenses.** All costs and expenses  
6 due the Settlement Administrator in connection with its administration of the Settlement  
7 including, but not limited to, locating Aggrieved Employees, and calculating, administering and  
8 distributing Notice Forms and Individual Penalties Payments to the Aggrieved Employees, shall  
9 be paid from the Gross Settlement Amount.

10 **VI. NOTICE AND PAYMENT PROCEDURES**

11 1. **The Settlement Administrator.** The Parties agree that Phoenix, should be  
12 appointed as Settlement Administrator. The Settlement Administrator will be responsible for  
13 preparing, administering, and distributing Notice Forms, the LWDA payment, and Individual  
14 Penalties Payments to the Aggrieved Employees, and issuing a final report and performing such  
15 other duties as the Parties may direct.

16 Administrative Expenses are not anticipated to exceed \$3,000. In the event that  
17 Administrative Expenses exceed \$3,000 any and all additional amounts shall be deducted from  
18 the Gross Settlement Amount and the Net Settlement Amount will be recalculated to reflect such  
19 additional Administrative Expenses. To the extent that Administrative Expenses exceed \$3,000,  
20 Plaintiff's Counsel agrees to provide an explanation to the Court, supported by declarations from  
21 Plaintiff's Counsel and/or Phoenix, as to the source of the additional Administrative Expenses,  
22 the reason such additional expenses were not anticipated prior to the execution of this  
23 Agreement, and an explanation as to whether such additional expenses should be deducted from  
24 the Gross Settlement Amount or allocated in some other manner, subject to Court approval. In  
25 the event that Administrative Expenses are less than \$3,000, the difference shall be added to the  
26 Net Settlement Amount for distribution to the Aggrieved Employees.

27 ///

28 ///

1           2.       **Timing of Payments.**

2                   a)       Within ten (10) business days of the Effective Date, Defendant shall: (i)  
3       provide the Settlement Administrator with an up-to-date list of Covered Employees  
4       containing names, social security numbers, last-known telephone numbers, last-known  
5       mailing addresses and pay periods for each Covered Employee (the "Database") and (ii)  
6       deposit with the Settlement Administrator the NSA, as calculated based on the Court-  
7       approved amounts of Attorneys' Fees and Expenses, Administrative Expenses, and  
8       Enhancement Payment, into a Qualified Settlement Account to be established by the  
9       Settlement Administrator.

10                  b)       Within ten (10) business days following receipt of the Database and NSA,  
11       the Settlement Administrator shall mail: (i) the Individual Penalties Payments to the  
12       Covered Employees using the mailing address information provided by Defendant and  
13       the results of the skip trace performed and (ii) the LWDA payment to the LWDA.

14           3.       **Notice to Covered Employees.** Each Individual Penalties Payment shall be  
15       accompanied by a letter ("Notice Form") explaining why the check is being sent and a basis for  
16       the calculation. The letter shall be approved by the Court upon approval of the Settlement.  
17       Defendant represents the addresses and data provided to effectuate the pro rata distribution of the  
18       Settlement is accurate to the best of Defendant's knowledge.

19           4.       **Returned Settlement Checks.** In the event that an Individual Penalties Payment  
20       check is returned to the Settlement Administrator with a forwarding address, the Individual  
21       Penalties Payment check will be re-mailed to the forwarding address. In the event an Individual  
22       Penalties Payment check is returned to the Settlement Administrator without a forwarding  
23       address or is otherwise undeliverable, the Settlement Administrator will make a diligent effort to  
24       correct the address and re-mail the returned Individual Penalties Payment check. If within the  
25       120-calendar day period following issuance of the Individual Penalties Payment check, the  
26       Covered Employee contacts the Settlement Administrator or counsel for either Party with a new  
27       address, the Individual Penalties Payment check will be re-issued and mailed to the new address  
28

provided any such re-issued Individual Penalties Payment check will indicate on its face that it is void if not negotiated within 120 calendar days of its issuance.

5. **Disposition of Uncashed Individual Penalties Payment Checks.** Individual Penalties Payment checks shall be negotiable for not less than 120 calendar days from issuance. All Individual Penalties Payment checks will indicate on their face that they are void if not negotiated within 120 calendar days of issuance. The Notice Form enclosed with the Individual Penalties Payments will also note this 120-day requirement. For Individual Penalties Payment checks remaining uncashed for more than 120 calendar days after issuance, the net funds shall be deposited into the California Secretary of State's Unclaimed Property division in the name of each such Covered Employee.

6. **No Effect on Employee Benefits.** All Individual Penalties Payment to Covered Employees shall be deemed to be paid to such Covered Employees in the year in which such payments actually are received by the Covered Employees. It is expressly understood and agreed that the receipt of such Individual Penalties Payment will not entitle any Covered Employees to additional compensation or benefits under any compensation or benefit plan or agreement in place during the period covered by the Agreement, nor will it entitle any Covered Employee to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the Individual Penalties Payments are the sole payments to be made by Defendant to the Covered Employees, and that the Covered Employees are not entitled to any new or additional compensation or benefits as a result of having received an Individual Penalties Payment (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).

7. **Final Report by Settlement Administrator.** Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

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1 **VII. TAX TREATMENT OF INDIVIDUAL PENALTIES PAYMENTS.**

2 1. **Tax Treatment.** It is expressly agreed by the Parties that all funds distributed  
3 pursuant to this Settlement will be considered penalties. Plaintiff and the Covered Employees  
4 will receive an IRS Form 1099-Misc (Box 3) for any payments received from the Settlement  
5 Administrator.

6 2. **No Warranty.** The Parties make no warranty as to any tax consequences of any  
7 payment hereunder. Any determination of the tax consequences of those payments is the sole  
8 responsibility of the Covered Employee. Covered Employees who receive an Individual  
9 Penalties Payment pursuant to this Settlement shall be responsible for correctly characterizing  
10 such amounts for tax reporting purposes and solely responsible for any and all tax obligations  
11 associated with such receipt.

12 **VIII. ADVICE OF ATTORNEY**

13 1. Plaintiff acknowledges that Defendant, through counsel to Plaintiff's counsel,  
14 encouraged Plaintiff to seek independent representation or legal counsel regarding the rights  
15 being waived by this Agreement, and was given a full and fair opportunity to become fully  
16 informed about the legal impact of this Agreement before signing this Agreement. Plaintiff is  
17 represented by counsel experienced in this type of matter, and this Agreement was reached after  
18 extensive negotiations. Plaintiff warrants and represents that in executing this Agreement, he has  
19 had the opportunity to have the terms of this Agreement and its consequences completely  
20 explained to them by his attorney, and fully understands the terms and consequences of this  
21 Agreement.

22 2. Plaintiff represents and acknowledges he is voluntarily entering into this  
23 Agreement with the full knowledge of the rights they may be waiving.

24 **IX. SUCCESSORS**

25 1. This Agreement shall inure to the benefit of the Covered Employees and  
26 Defendant, and each of their respective former, current and future parent companies,  
27 subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any  
28 investment bankers, accountants, insurers, reinsurers, attorneys, and any past, present or future

1 officers, directors and employees), predecessors, successors, assigns, officers, directors,  
2 employees, and any individuals or entities which could be jointly liable for any of the Released  
3 Claims as defined herein.

4 **X. EFFECTUATION**

5 1. The Parties shall execute any and all other documents and do all other things  
6 which may be reasonably necessary to carry out the terms of this Agreement.

7 2. The Court shall enter judgment upon approval of this Agreement. The Court shall  
8 retain jurisdiction over the Parties to enforce the terms of the judgment. Notice of entry of  
9 judgment and order shall be served on the LWDA.

10 3. The Parties agree that this Agreement may be executed in counterparts and that  
11 original signatures, facsimile signatures, or PDF files of signatures shall be binding.

12 **XI. ATTORNEYS' FEES AND COSTS**

13 1. **Attorney's Fees.** As part of the request for Court Approval, Plaintiff's Counsel  
14 will submit its request for an award of attorneys' fees and an application for reimbursement of  
15 any actual costs associated with Plaintiff's Counsel's litigation and Settlement of this case, to be  
16 paid out of the Gross Settlement Amount, as follows: (i) up to thirty-five percent (35%) of the  
17 GSA (\$150,000) for an award of Plaintiff's Counsel's attorneys' fees, equivalent to Fifty-Two  
18 Thousand Five Hundred Dollars (\$52,500) and (ii) up to Twelve Thousand Dollars (\$12,000.00)  
19 for reimbursement of actual costs incurred in Plaintiff's Counsel's litigation of this case.  
20 Defendant will not oppose this application. The Court shall determine the amount of costs and  
21 attorneys' fees to be paid to Plaintiff's Counsel at the hearing on approval of this Settlement.  
22 Any portion of the amount sought for fees and costs that is not awarded to Plaintiff's counsel  
23 will not revert to Defendant but will be part of the Net Settlement Amount to be distributed to the  
24 LWDA and Covered Employees as set forth in Paragraph III.2.

25 2. **Each Party to Bear Its Own Costs.** Except as is specifically provided herein, the  
26 Parties hereto will bear responsibility for their own attorneys' fees and costs, taxable or  
27 otherwise, incurred by them or arising out of this Action, and will not seek reimbursement  
28 thereof from any Party to this Agreement.

1 **XII. MISCELLANEOUS PROVISIONS**

2 1. **Entire Agreement.** This Agreement is the complete and entire agreement  
3 between the Parties regarding the settled claims as of the effective date of the Agreement, and is  
4 intended to be fully integrated. Any and all prior agreements and/or understandings, whether  
5 written or oral, that are not set forth in this Agreement shall have no force or effect. Each Party  
6 acknowledges and represents that in executing this Agreement they have not relied upon any  
7 inducements, promises, or representations made by the other Party or any person representing  
8 any other Party which are not specifically set forth in this Agreement.

9 2. **Modification.** This Agreement may not be modified, except by an express written  
10 agreement signed by all Parties.

11 3. **Venue.** The parties agree that this Agreement is entered into and is to be  
12 performed in Tulare County, California, and that venue for any proceeding to enforce or interpret  
13 this Agreement shall be in Tulare County, California.

14 4. **Construction.** Each Party to this Agreement has had an opportunity to participate  
15 in the drafting of this Agreement to the extent they desire and, therefore, this Agreement shall be  
16 construed according to its plain meaning and not in favor of or against any Party.

17 5. **Governing Law.** This Stipulation is intended to and shall be governed by the  
18 laws of the State of California, without regard to conflict of law principles, in all respects,  
19 including execution, interpretation, performance, and enforcement.

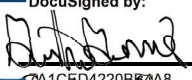
20 6. **Corporate Signatories.** Any person executing this Stipulation or any such related  
21 document on behalf of a corporate signatory hereby warrants and promises, for the benefit of all  
22 Parties hereto, that such person has been duly authorized by such corporation to execute this  
23 Stipulation or any such related document.

24 7. **Execution in Counterparts.** This Stipulation shall become effective upon its  
25 execution by all of the undersigned. The Parties and their counsel may execute this Stipulation in  
26 counterparts, and execution of counterparts shall have the same force and effect as if all Parties  
27 had signed the same instrument.

1           8.     **Action to Enforce Agreement.** In any suit or court action to enforce the terms of  
2 this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs.

3  
4           **IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date below  
5 their signatures or the signature of their representatives. The date of the Agreement shall be the  
6 date of the latest signature.

7  
8 Dated: 03/08/23 | 4:49 PST

DocuSigned by:  
  
7A1CFD4220BF4A8  
Gustavo Gomez  
Plaintiff and PAGA Representative

9  
10  
11 Dated: \_\_\_\_\_

\_\_\_\_\_  
R.N.V., Inc.

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

8. **Action to Enforce Agreement.** In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date below their signatures or the signature of their representatives. The date of the Agreement shall be the date of the latest signature.

Dated: \_\_\_\_\_

Gustavo Gomez  
Plaintiff and PAGA Representative

Dated: 3/31/2023

DocuSigned by:

*Violet Gong*

R.N.V., Inc. 11684E6B2415...

Printed: Violet Gong

Title: Administrative Manager